

TDA Principles of Ethics and Code of Professional Conduct (May 2015)

I. PREAMBLE.

The dental profession was founded on a set of relationships, which created personal obligations requiring the development of a body of ethical statements to which the dental profession, in a changing society, has long and voluntarily subscribed. As a member of this profession, a dentist must recognize these relationships and responsibilities not only to the patients, but also, to society, to colleagues, to self, to other health professionals, to the profession and to the art and science of dentistry. The following fundamental tenets, which establish the Principles of Ethics and Code of Professional Conduct adopted by the Texas Dental Association, are standards by which dentists should determine the propriety of their conduct in addressing these relationships and responsibilities.

We, therefore, dedicate ourselves and pledge our commitment to these principles.

I. The primary obligation of the dental practitioner is service to the public, which shall include the rendering of quality care to all patients with full respect for the dignity of each individual regardless of status. Dentists should merit the confidence of their patients by rendering appropriate service and attention, competently and timely, based upon the patient's right of informed self-determination.

II. Professional competence is the just expectation of each patient. It is the duty of each dentist to strive continually to improve knowledge and skill and to make available to all patients and colleagues the benefits of their professional attainments.

III. Trust by the public that serving their true dental needs with appropriate quality care is the heart of the patient-dentist relationship. This concept of trust, imbued with dedicated service, is the hallmark of professionalism and has provided the warrant for self-governance given the dental profession by society.

IV. The dental profession's privilege and responsibility of self-governance demands ethical standards more stringent than those of the market place. These standards include exercising honesty and restraint when making statements or representations about care and skill, both in private discussions with patients and in public announcements.

V. The critical interdependence and good will existing among practitioners, which allows and encourages professional consultations and exchanges necessary for good patient care, can be damaged significantly by inappropriate and/or self-serving behavior. A dentist should seek consultation with patient approval or recommend referral when the welfare of the patient or quality of care will be safeguarded or enhanced thereby.

VI. Communications from and to patients are a matter of high moral significance. A dentist may not reveal the confidences entrusted in the course of professional treatment without patient approval unless required to do so by law or unless it becomes necessary in order to protect the welfare of the individual or the community. Providing patients with a diagnosis and proposed treatment should be done in a manner that is clear and appropriate.

VII. A dentist may choose whom to serve, but such choice shall not be influenced by an individual's particular class or group status. Having undertaken the care of a patient, a dentist may not neglect that patient and, unless discharged by the patient, may discontinue service only after giving adequate notice. In an emergency, however, a dentist should render appropriate care compatible with professional ability and existing circumstances.

VIII. Dentists have the obligation to the patient and to society to be responsible for, and to diligently oversee and direct the activities of allied health personnel within their employ for the optimum benefit of the patient.

IX. A dentist should encourage, support and participate in research and programs or activities which have the purpose of improving the health and well-being of the individual and the community.

X. Reimbursement through public and private entities is a growing feature of the dental practice. These entities and the dentist are in an important relationship, which demands mutual fidelity, and requires each to recognize their obligation to patients and society.

XI. Dentists should observe all laws, uphold the dignity and honor of the profession and accept its self-imposed discipline. They should report dentists deficient in character or competence or who engage in fraud or deception.

XII. A dentist should oppose from all sources any terms, conditions or restraints, which tend to interfere with or impair the free and complete exercise of dental judgment and treatment or cause a deterioration in the quality of dental care.

II. INTRODUCTION.

The dental profession holds a special position of trust within society. As a consequence, society affords the profession certain privileges that are not available to members of the public-at-large. In return, the profession makes a commitment to society that its members will adhere to high ethical standards of conduct. These standards are embodied in the *TDA Principles of Ethics and Code of Professional Conduct (TDA Code)*. The *TDA Code* is, in effect, a written expression of the obligations arising from the implied contract between the dental profession and society. Members of the TDA voluntarily agree to abide by the *TDA Code* as a condition of membership in the Association. They recognize that continued public trust in the dental profession is based on the commitment of individual dentists to high ethical standards of conduct.

The *TDA Code* is mirrored after the American Dental Association (ADA) *Principles of Ethics and Code of Professional Conduct* and has three main components: The **Principles of Ethics**, the **Code of Professional Conduct** and the **Advisory Opinions**. The **Principles of Ethics** are the aspirational goals of the profession. They provide guidance and offer justification for the *Code of Professional Conduct* and the *Advisory Opinions*. There are five fundamental principles that form the foundation of the *TDA Code*: patient autonomy, non-maleficence, beneficence, justice and veracity. Principles can overlap each other as well as compete with each other for priority. More than one principle can justify a given element of the *Code of Professional Conduct*. Principles may at times need to be balanced against each other, but, otherwise, they are the profession's firm guideposts.

The **Code of Professional Conduct** is an expression of specific types of conduct that are either required or prohibited. The *Code of Professional Conduct* is a product of the TDA's and ADA's legislative system. All elements of the *Code of Professional Conduct* result from resolutions that are adopted by the TDA's and ADA's House of Delegates. The *Code of Professional Conduct* is binding on members of the TDA, and violations may result in disciplinary action. It is the duty of the member to comply with the reasonable request of a duly constituted committee, council or other body of his component society or of this Association necessary or convenient to enable such a body to perform its functions and to abide by the decisions of such body. This *Code* is also necessarily in compliance with and governed by the ADA Bylaws, the TDA Bylaws, the Texas State Board of Dental Examiners Rules and Regulations, the Dental Practice Act, and other pertinent state and local laws.

The **Advisory Opinions** are interpretations that apply the *Code of Professional Conduct* to specific fact situations. They are adopted by the ADA's Council on Ethics, Bylaws and Judicial Affairs to provide guidance to the membership on how the Council might interpret the *Code of Professional Conduct* in a disciplinary proceeding. The *ADA Code* is an evolving document and by its very nature cannot be a complete articulation of all ethical obligations. The *ADA Code* is the result of an ongoing dialogue between the dental profession and society, and as such, is subject to continuous review.

Although ethics and the law are closely related, they are not the same. Ethical obligations may—and often do—exceed legal duties. In resolving any ethical problem not explicitly covered by the *ADA Code*, dentists should consider the ethical principles, the patient's needs and interests, and any applicable laws.

III. PRINCIPLES, CODE OF PROFESSIONAL CONDUCT AND ADVISORY OPINIONS.

Section 1 PRINCIPLE: PATIENT AUTONOMY (“self-governance”). The dentist has a duty to respect the patient's rights to self-determination and confidentiality. *This principle expresses the concept that professionals have a duty to treat the patient according to the patient's desires, within the bounds of what a reasonable and prudent dentist would do under the same or similar circumstances and in accordance with applicable Texas laws as found in the Dental Practice Act and to protect the patient's confidentiality. Under this principle, the dentist's primary obligations include involving patients in treatment decisions in a meaningful way, with due consideration being given to the patient's needs, desires and abilities, and safeguarding the patient's privacy.*

CODE OF PROFESSIONAL CONDUCT

1.A. PATIENT INVOLVEMENT.

The dentist should inform the patient of the proposed treatment, and any reasonable alternatives, in a manner that allows the patient to become involved in treatment decisions.

1.B. PATIENT RECORDS.

Dentists are obliged to safeguard the confidentiality of patient records. Dentists shall maintain patient records in a manner consistent with the protection of the welfare of the patient. Upon request of a patient or another dental practitioner, dentists shall provide any information in accordance with applicable law that will be beneficial for the future treatment of that patient.

ADVISORY OPINIONS

1.B.1. FURNISHING COPIES OF RECORDS.

A dentist has the ethical obligation on request of either the patient or the patient's new dentist to furnish in accordance with applicable law, either gratuitously or for nominal cost, not to exceed the schedule set forth by the TSBDE Rule 108.8 (g), such dental records or copies or summaries of them, including dental X-rays or copies of them, as will be beneficial for the future treatment of that patient. This obligation exists whether or not the patient's account is paid in full.

1.B.2. CONFIDENTIALITY OF PATIENT RECORDS.

The dominant theme in Code Section 1.B is the protection of the confidentiality of a patient's records. The statement in this section that relevant information in the records should be released to another dental practitioner assumes that the dentist requesting the information is the patient's present dentist. There may be circumstances where the former dentist has an ethical obligation to inform the present dentist of certain facts. Code Section 1.B assumes that the dentist releasing relevant information is acting in accordance with applicable law. Dentists should be aware that the laws of the various jurisdictions in the United States are not uniform and some confidentiality laws appear to prohibit the transfer of pertinent information, such as HIV seropositivity. Absent certain knowledge that the laws of the dentist's jurisdiction permit the forwarding of this information, a dentist should obtain the patient's written permission before forwarding health records which contain information of a sensitive nature, such as HIV seropositivity, chemical dependency or sexual preference. If it is necessary for a treating dentist to consult with another dentist or physician with respect to the patient, and the circumstances do not permit the patient to remain anonymous, the treating dentist should seek the permission of the patient prior to the release of data from the patient's records to the consulting practitioner. If the patient refuses, the treating dentist should then contemplate obtaining legal advice regarding the termination of the dentist-patient relationship.

Section 2 PRINCIPLE: NON-MALEFICENCE ("do no harm"). The dentist has a duty to refrain from harming the patient.

This principle expresses the concept that professionals have a duty to protect the patient from harm. Under this principle, the dentist's primary obligations include keeping knowledge and skills current, knowing one's own limitations and when to refer to a specialist or other professional, and knowing when and under what circumstances delegation of patient care to auxiliaries is appropriate.

CODE OF PROFESSIONAL CONDUCT.

2.A. EDUCATION.

The privilege of dentists to be accorded professional status rests primarily in the knowledge, skill and experience with which they serve their patients and society. All dentists, therefore, have the obligation of keeping their knowledge and skill current.

2.B. CONSULTATION AND REFERRAL.

Dentists shall be obliged to seek consultation, if possible, whenever the welfare of patients will be safeguarded or advanced by utilizing those who have special skills, knowledge, and experience. When patients visit or are referred to specialists or consulting dentists for consultation:

1. The specialists or consulting dentists upon completion of their care shall return the patient, unless the patient expressly reveals a different preference, to the referring dentist, or, if none, to the dentist of record for future care.
2. The specialists shall be obliged when there is no referring dentist and upon a completion of their treatment to inform patients when there is a need for further dental care.

ADVISORY OPINION

2.B.1. SECOND OPINIONS.

A dentist who has a patient referred by a third party for a “second opinion” regarding a diagnosis or treatment plan recommended by the patient’s treating dentist should render the requested second opinion in accordance with this *Code of Ethics*. In the interest of the patient being afforded quality care, the dentist rendering the second opinion should not have a financial or vested interest in the ensuing recommendation.

2.C. USE OF AUXILIARY PERSONNEL.

Dentists shall be obliged to protect the health of their patients by only assigning to qualified auxiliaries those duties which can be legally delegated. Dentists shall be further obliged to prescribe and supervise the patient care provided by all auxiliary personnel working under their direction.

2.D. PERSONAL IMPAIRMENT.

It is unethical for a dentist to practice while abusing controlled substances, alcohol or other chemical agents which impair the ability to practice. All dentists have an ethical obligation to urge chemically impaired colleagues to seek treatment. Dentists with first-hand knowledge that a colleague is practicing dentistry when so impaired have an ethical responsibility to report such evidence to the appropriate entity.

ADVISORY OPINION

2.D.1. ABILITY TO PRACTICE.

A dentist who contracts any disease or becomes impaired in any way that might endanger patients or dental staff shall, with consultation and advice from a qualified physician or other authority, limit the activities of practice to those areas that do not endanger patients or dental staff. A dentist who has been advised to limit the activities of his or her practice should monitor the aforementioned disease or impairment and make additional limitations to the activities of the dentist’s practice, as indicated.

2.E. POST EXPOSURE, BLOOD BORNE PATHOGENS.

All dentists, regardless of their blood borne pathogen status, have an ethical obligation to immediately inform any patient who may have been exposed to blood or other potentially infectious material in the dental office of the need for post exposure evaluation and follow-up and to immediately refer the patient to a qualified health care practitioner who can provide post exposure services. The dentist’s ethical obligation in the event of an exposure incident extends to providing information concerning the dentist’s own blood borne pathogen status to the evaluating health care practitioner, if the dentist is the source individual, and to submitting to testing that will assist in the evaluation of the patient. If a staff member or other third person is the source individual, the dentist should encourage that person to cooperate as needed for the patient’s evaluation.

2.F. PATIENT ABANDONMENT.

Once a dentist has undertaken a course of treatment, the dentist should not discontinue that treatment without giving the patient adequate notice and the opportunity to obtain the services of another dentist. Care should be taken that the patient's oral health is not jeopardized in the process.

ADVISORY OPINION

2.F.1. Patients must be dismissed according to all Texas applicable laws including but not limited to Texas State board of Dental Examiners Rule 108.5 Patient Abandonment

2.G. PERSONAL RELATIONSHIPS WITH PATIENTS.

Dentists should avoid interpersonal relationships that could impair their professional judgment or risk the possibility of exploiting the confidence placed in them by a patient.

Section 3 PRINCIPLE: BENEFICENCE ("do good"). The dentist has a duty to promote the patient's welfare.

This principle expresses the concept that professionals have a duty to act for the benefit of others. Under this principle, the dentist's primary obligation is service to the patient and the public-at-large. The most important aspect of this obligation is the competent and timely delivery of dental care within the bounds of clinical circumstances presented by the patient, with due consideration being given to the needs, desires and values of the patient. The same ethical considerations apply whether the dentist engages in fee-for-service, managed care or some other practice arrangement. Dentists may choose to enter into contracts governing the provision of care to a group of patients; however, contract obligations do not excuse dentists from their ethical duty to put the patient's welfare first.

CODE OF PROFESSIONAL CONDUCT

3.A. COMMUNITY SERVICE.

Since dentists have an obligation to use their skills, knowledge and experience for the improvement of the dental health of the public and are encouraged to be leaders in their community.

3.B. GOVERNMENT OF A PROFESSION.

Every profession owes society the responsibility to regulate itself. Such regulation is achieved largely through the influence of the professional societies. Member dentists, therefore have the dual obligation of observing its code of ethics and participating in its governance.

3.C. RESEARCH, DEVELOPMENT, PATENTS AND COPYRIGHTS.

Dentists have the obligation of making the results and benefits of their investigative efforts available to all when they are useful in safeguarding or promoting the health of the public and it is unethical to hold out or imply that such results and benefits are in any way private or exclusive. Patents and copyrights may be secured by dentists, provided they and the remuneration derived from them are not used to restrict research, practice or the benefits of the patented or copyrighted material.

3.E. ABUSE AND NEGLECT.

Dentists shall be obliged to become familiar with the signs of abuse and neglect and to report suspected cases to the proper authorities, consistent with state laws.

ADVISORY OPINION

3.E.1. REPORTING ABUSE AND NEGLECT.

The public and the profession are best served by dentists who are familiar with identifying the signs of abuse and neglect and knowledgeable about the appropriate intervention resources for all populations. A dentist's ethical obligation to identify and report the signs of abuse and neglect is, at a minimum, to be consistent with a dentist's legal obligation in the jurisdiction where the dentist practices. Dentists, therefore, are ethically obliged to identify and report suspected cases of abuse and neglect to the same extent as they are legally obliged to do so in the jurisdiction where they practice.

Dentists have a concurrent ethical obligation to respect an adult patient's right to self-determination and confidentiality and to promote the welfare of all patients. Care should be exercised to respect the wishes of an adult patient who asks that a suspected case of abuse and/or neglect not be reported, where such a report is not mandated by law. With the patient's permission, other possible solutions may be sought.

Dentists should be aware that jurisdictional laws vary in their definitions of abuse and neglect, in their reporting requirements and the extent to which immunity is granted to good faith reporters. The variances may raise potential legal and other risks that should be considered, while keeping in mind the duty to put the welfare of the patient first. Therefore a dentist's ethical obligation to identify and report suspected cases of abuse and neglect can vary from one jurisdiction to another.

Dentists are ethically obligated to keep current their knowledge of both identifying abuse and neglect and reporting it in the jurisdiction(s) where they practice.

3.F. PROFESSIONAL Demeanor IN THE WORKPLACE.

Dentists have the obligation to provide a workplace environment that supports respectful and collaborative relationships for all those involved in oral health care.

ADVISORY OPINION

3.F.1. Disruptive Behavior in the Workplace .

Dentists are the leaders of the oral healthcare team. As such, their behavior in the workplace is instrumental in establishing and maintaining a practice environment that supports the mutual respect, good communication, and high levels of collaboration among team members required to optimize the quality of patient care provided. Dentists who engage in disruptive behavior in the workplace risk undermining professional relationships among team members, decreasing the quality of patient care provided, and undermining the public's trust and confidence in the profession.

3.G. COURT ACTION AND ASSOCIATION DISCIPLINE

Dentists who are members of The Texas Dental Association shall comply with the laws of the State of Texas relating to the practice of dentistry. Any dentist reprimanded, disciplined or sentenced by final action of any court or other authority of competent jurisdiction, pursuant to the law of the State of Texas governing the practice of dentistry, or who is found by final action

of the court guilty of a crime reflecting unfavorably on the dentist or the dental profession, shall there by render himself liable to discipline by the Association.

Section 4 PRINCIPLE: JUSTICE (“fairness”). The dentist has a duty to treat people fairly. *This principle expresses the concept that professionals have a duty to be fair in their dealings with patients, colleagues and society. Under this principle, the dentist’s primary obligations include dealing with people justly and delivering dental care without prejudice. In its broadest sense, this principle expresses the concept that the dental profession should actively seek allies throughout society on specific activities that will help improve access to care for all.*

CODE OF PROFESSIONAL CONDUCT

4.A. PATIENT SELECTION.

While dentists, in serving the public, may exercise reasonable discretion in selecting patients for their practices, dentists shall not refuse to accept patients into their practice or deny dental service to patients because of the patient’s race, creed, color, sex or national origin.

ADVISORY OPINION

4.A.1. PATIENTS WITH BLOOD BORNE PATHOGENS.

A dentist has the general obligation to provide care to those in need. A decision not to provide treatment to an individual because the individual is infected with Human Immunodeficiency Virus, Hepatitis B Virus, Hepatitis C Virus or another blood borne pathogen, based solely on that fact, is unethical. Decisions with regard to the type of dental treatment provided or referrals made or suggested should be made on the same basis as they are made with other patients. As is the case with all patients, the individual dentist should determine if he or she has the need of another’s skills, knowledge, equipment or experience. The dentist should also determine, after consultation with the patient’s physician, if appropriate, if the patient’s health status would be significantly compromised by the provision of dental treatment.

4.B. EMERGENCY SERVICE.

Dentists shall be obliged to make reasonable arrangements for the emergency care of their patients of record. Dentists shall be obliged when consulted in an emergency by patients not of record to make reasonable arrangements for emergency care. If treatment is provided, the dentist, upon completion of treatment, is obliged to return the patient to his or her regular dentist unless the patient expressly reveals a different preference.

4.C. JUSTIFIABLE CRITICISM.

Dentists shall be obliged to report to the appropriate reviewing agency as determined by the local component or constituent society instances of gross or continual faulty treatment by other dentists. Patients should be informed of their present oral health status without disparaging comment about prior services. Dentists issuing a public statement with respect to the profession shall have a reasonable basis to believe that the comments made are true.

ADVISORY OPINION

4.C.1. MEANING OF “JUSTIFIABLE.”

Patients are dependent on the expertise of dentists to know their oral health status. Therefore, when informing a patient of the status of his or her oral health, the dentist should exercise care that the comments made are truthful, informed and justifiable. This should, if possible, involve consultation with the previous treating dentist(s), in accordance with applicable law, to

determine under what circumstances and conditions the treatment was performed. A difference of opinion as to preferred treatment should not be communicated to the patient in a manner which would unjustly imply mistreatment. There will necessarily be cases where it will be difficult to determine whether the comments made are justifiable. The burden shall be on the commenting dentist to produce evidence upon which he based his comments and to establish therefrom that a reasonable dentist would be justified in believing the comments to be true. For the purposes of this section, the word "publication" means any form of communication including, without limitation, the press, radio, television and lecture.

Therefore, this section is phrased to address the discretion of dentists and advises against unknowing or unjustifiable disparaging statements against another dentist. However, it should be noted that, where comments are made which are not supportable and therefore unjustified, such comments can be the basis for the institution of a disciplinary proceeding against the dentist making such statements.

4.D. EXPERT TESTIMONY.

Dentists may provide expert testimony when that testimony is essential to a just and fair disposition of a judicial or administrative action.

ADVISORY OPINION

4.D.1. CONTINGENT FEES.

It is unethical for a dentist to agree to a fee contingent upon the favorable outcome of the litigation in exchange for testifying as a dental expert.

4.E. REBATES AND SPLIT FEES.

Dentists shall not accept or tender "rebates" or "split fees."

ADVISORY OPINION

4.E.1. SPLIT FEES IN ADVERTISING AND MARKETING SERVICES.

The prohibition against a dentist's accepting or tendering rebates or split fees applies to business dealings between dentists, physicians, and any third party, not just other dentists. A dentist who pays for advertising or marketing services by sharing a specified portion of the professional fees collected from prospective or actual patients with the vendor providing the advertising or marketing services is engaged in fee splitting. However, discount voucher advertising (e.g., Google Adwords and Groupon) is allowed and does not constitute prohibited fee splitting because the web service neither solicits the patient nor guarantees the purchaser will become a patient. The Texas State Board of Dental Examiners (TSBDE) considers such advertising permissible because the web service is not a professional colleague of the advertising dentist, nor is it providing patient referrals. Refer to the TSBDE's Rules and Regulations, Chapter 108, Subchapter E, Rule 108.58 "Solicitation, Referrals, and Gift Schemes" for further clarification

Section 5 PRINCIPLE: VERACITY ("truthfulness"). The dentist has a duty to communicate truthfully.

This principle expresses the concept that professionals have a duty to be honest and trustworthy in their dealings with people. Under this principle, the dentist's primary obligations include respecting the position of trust inherent in the dentist-patient relationship, communicating truthfully and without deception, and maintaining intellectual integrity.

CODE OF PROFESSIONAL CONDUCT

5.A. REPRESENTATION OF CARE.

Dentists shall not represent the care being rendered to their patients in a false or misleading manner.

ADVISORY OPINIONS

5.A.1. DENTAL AMALGAM AND OTHER RESTORATIVE MATERIALS.

Based on current scientific data, the ADA has determined that the removal of amalgam restorations from the non-allergic patient for the alleged purpose of removing toxic substances from the body, when such treatment is performed solely at the recommendation of the dentist, is improper and unethical. The same principle of veracity applies to the dentist's recommendation concerning the removal of any dental restorative material.

5.A.2. UNSUBSTANTIATED REPRESENTATIONS.

A dentist who represents that dental treatment or diagnostic techniques recommended or performed by the dentist has the capacity to diagnose, cure or alleviate diseases, infections or other conditions, when such representations are not based upon accepted scientific knowledge or research, is acting unethically.

5.B. REPRESENTATION OF FEES.

Dentists shall not represent the fees being charged for providing care in a false or misleading manner.

ADVISORY OPINIONS

5.B.1. WAIVER OF COPAYMENT.

A dentist who accepts a third party payment under a copayment plan as payment in full without disclosing to the third party that the patient's payment portion will not be collected, is engaged in overbilling. The essence of this ethical impropriety is deception and misrepresentation; an overbilling dentist makes it appear to the third party that the charge to the patient for services rendered is higher than it actually is.

5.B.2. OVERBILLING.

It is unethical for a dentist to increase a fee to a patient solely because the patient is covered under a dental benefits plan.

5.B.3. FEE DIFFERENTIAL. The fee for a patient without dental benefits shall be considered a dentist's full fee. This is the fee that should be represented to all benefit carriers regardless of any negotiated fee discount.

5.B.4. TREATMENT DATES.

A dentist who submits a claim form to a third party reporting incorrect treatment dates for the purpose of assisting a patient in obtaining benefits under a dental plan, which benefits would otherwise be disallowed, is engaged in making an unethical, false or misleading representation to such third party.

5.B.5. DENTAL PROCEDURES.

A dentist who incorrectly describes on a third party claim form a dental procedure in order to receive a greater payment or reimbursement or incorrectly makes a non-covered procedure appear to be a covered procedure on such a claim form is engaged in making an unethical, false or misleading representation to such third party.

5.B.6. UNNECESSARY SERVICES.

A dentist who recommends and performs unnecessary dental services or procedures is engaged in unethical conduct. The dentist's ethical obligation in this matter applies regardless of the type of practice arrangement or contractual obligations in which he or she provides patient care.

5.C. DISCLOSURE OF CONFLICT OF INTEREST.

A dentist who presents educational or scientific information in an article, seminar or other program shall disclose to the readers or participants any monetary or other special interest the dentist may have with a company whose products are promoted or endorsed in the presentation. Disclosure shall be made in any promotional material and in the presentation itself.

5.D. DEVICES AND THERAPEUTIC METHODS.

Except for formal investigative studies, dentists shall be obliged to prescribe, dispense, or promote only those devices, drugs and other agents whose complete formulae are available to the dental profession. Dentists shall have the further obligation of not holding out as exclusive any device, agent, method or technique if that representation would be false or misleading in any material respect.

ADVISORY OPINIONS

5.D.1. REPORTING ADVERSE REACTIONS.

A dentist who suspects the occurrence of an adverse reaction to a drug or dental device has an obligation to communicate that information to the broader medical and dental community, including, in the case of a serious adverse event, the Food and Drug Administration (FDA).

5.D.2. MARKETING OR SALE OF PRODUCTS OR PROCEDURES.

Dentists who, in the regular conduct of their practices, engage in or employ auxiliaries in the marketing or sale of products or procedures to their patients must take care not to exploit the trust inherent in the dentist-patient relationship for their own financial gain. Dentists should not induce their patients to purchase products or undergo procedures by misrepresenting the product's value, the necessity of the procedure or the dentist's professional expertise in recommending the product or procedure.

In the case of a health-related product, it is not enough for the dentist to rely on the manufacturer's or distributor's representations about the product's safety and efficacy. The dentist has an independent obligation to inquire into the truth and accuracy of such claims and verify that they are founded on accepted scientific knowledge or research. Dentists should disclose to their patients all relevant information the patient needs to make an informed purchase decision, including whether the product is available elsewhere and whether there are any financial incentives for the dentist to recommend the product that would not be evident to the patient.

5.E. PROFESSIONAL ANNOUNCEMENT.

In order to properly serve the public, dentists should represent themselves in a manner that contributes to the esteem of the profession. Dentists should not misrepresent their training and competence in any way that would be false or misleading in any material respect.

5.F. ADVERTISING. Although any dentist may advertise, no dentist shall advertise or solicit patients in any form of communication in a manner that is false or misleading in any material respect. All advertising in any form shall comply with the Texas State Board of Dental Examiners Rules and Regulations Chapter 108, Subchapter E, Rules 108.50-108.63.

ADVISORY OPINIONS

5.F.1. PUBLISHED COMMUNICATIONS.

If a dental health article, message or newsletter is published in print or electronic media under a dentist's byline to the public without making truthful disclosure of the source and authorship or is designed to give rise to questionable expectations for the purpose of inducing the public to utilize the services of the sponsoring dentist, the dentist is engaged in making a false or misleading representation to the public in a material respect.

5.F.2. EXAMPLES OF "FALSE OR MISLEADING."

The following examples are set forth to provide insight into the meaning of the term "false or misleading in a material respect." These examples are not meant to be all-inclusive. Rather, by restating the concept in alternative language and giving general examples, it is hoped that the membership will gain a better understanding of the term. With this in mind, statements shall be avoided which would: a) contain a material misrepresentation of fact, b) omit a fact necessary to make the statement considered as a whole not materially misleading, c) be intended or be likely to create an unjustified expectation about results the dentist can achieve, and d) contain a material, objective representation, whether express or implied, that the advertised services are superior in quality to those of other dentists, if that representation is not subject to reasonable substantiation.

Subjective statements about the quality of dental services can also raise ethical concerns. In particular, statements of opinion may be misleading if they are not honestly held, if they misrepresent the qualifications of the holder, or the basis of the opinion, or if the patient reasonably interprets them as implied statements of fact. Such statements will be evaluated on a case by case basis, considering how patients are likely to respond to the impression made by the advertisement as a whole. The fundamental issue is whether the advertisement, taken as a whole, is false or misleading in a material respect.

Examples. In addition to the plain and ordinary meaning of the provision set forth throughout these guidelines, additional examples of advertisements that may be false, misleading, deceptive, or not readily subject to verification include but are not limited to:

1. Making a material misrepresentation of fact or omitting a fact necessary to make a statement as a whole not materially misleading;
2. Intimidating or exerting undue pressure or undue influence over a prospective patient;
3. Appealing to an individual's anxiety in an excessive or unfair way;
4. Claiming to provide or perform dental work without pain or discomfort to the patient;
5. Implying or suggesting superiority of materials or performance of professional services;

6. Comparing a health care professional's services with another health care professional's services unless the comparison can be factually substantiated;
7. Communicating an implication, prediction or suggestion of any guarantee of future satisfaction or success of a dental service or otherwise creating unjustified expectations concerning the potential result of dental treatment. The communication of a guarantee to return a fee if the patient is not satisfied with the treatment rendered is not considered false, misleading deceptive or not readily subject to verification under this rule;
8. Containing a testimonial from a person who is not a patient of record or that includes false, misleading or deceptive statements, or which is not readily subject to verification, or which fails to include disclosures or warnings as to the identity and credentials of the person making the testimonial;
9. Referring to benefits or other attributes of dental procedures or products that involve significant risks without including realistic assessments of the safety and efficacy of those procedures or products;
10. Causing confusion or misunderstanding as to the credentials, education, or licensing of a health care professional;
11. Representing in the use of a professional name a title or professional identification that is expressly or commonly reserved to or used by another profession or professional;
12. Failing to make truthful disclosure of the source and authorship of any message published under a dentist's byline;
13. Communicating an implication or suggestion that a service is free or discounted when the fee is built in to a companion procedure provided to the patient and charged to the patient; and
14. Communicating statistical data, representations, or other information that is not subject to reasonable verification by the public.

ADVISORY OPINION

5.F.3. UNEARNED, NON-HEALTH DEGREES

Some organizations grant dentists fellowship status as a credential of membership in the organization or some other form of voluntary association, such as "Fellow of the Academy of General Dentistry" (FAGD), or "Fellow of the American College of Dentists" (FACD). Dentists are permitted to advertise such earned credentials so long as they avoid any communication that may imply specialization in a recognized specialty, or specialization in an area of dentistry that is not recognized as a specialty, or attainment of an earned academic degree.

A listing of credentials shall be separate and clearly distinguishable from the dentist's designation as a dentist. A listing of credentials may not occupy the same line as the dentist's name and designation as a dentist. Any use of abbreviations to designate credentials shall be accompanied by a definition of the acronym immediately following the credential.

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5.F.4. REFERRAL SERVICES

In accordance with the Dental Practice Act of the Texas Occupations Code (Title 3, Chapter 102.001-102.011 and 259.008(8)) a dentist may not offer, give, dispense, distribute, or make available to any third party or aid or abet another person to do so, any cash, gift, premium, chance, reward, ticket, item, or thing of value for securing or soliciting patients.

A dentist may offer, give, dispense, distribute or make available directly to a potential patient, a non-cash gift valued at no more than ten dollars to secure or solicit the potential patient. A

dentist is permitted to give to any patient of record any cash premium, chance, reward, ticket, item, or thing of value for the continuation of that relationship as a patient of that dentist. A dentist shall not be involved with a referral service that is based on the volume or value of patient referrals

5.F.5. INFECTIOUS DISEASE TEST RESULTS.

An advertisement or other communication intended to solicit patients which omits a material fact or facts necessary to put the information conveyed in the advertisement in a proper context can be misleading in a material respect. A dental practice should not seek to attract patients on the basis of partial truths which create a false impression.

For example, an advertisement to the public of HIV negative test results, without conveying additional information that will clarify the scientific significance of this fact contains a misleading omission. A dentist could satisfy his or her obligation under this advisory opinion to convey additional information by clearly stating in the advertisement or other communication: "This negative HIV test cannot guarantee that I am currently free of HIV."

5.G. NAME OF PRACTICE.

Since the name under which a dentist conducts his or her practice may be a factor in the selection process of the patient, the use of a trade name or an assumed name that is false or misleading in any material respect is unethical. Use of the name of a dentist no longer actively associated with the practice may be continued for a period not to exceed forty (40) days.

ADVISORY OPINION

5.G.1. DENTIST LEAVING PRACTICE.

Dentists leaving a practice who authorize continued use of their names should receive competent advice on the legal implications of this action. With permission of a departing dentist, his or her name may be used for no more than forty (40) days, if, after the forty day grace period has expired, prominent notice is provided to the public through such mediums as a sign at the office and a short statement on stationery and business cards that the departing dentist has retired from the practice.

5.H. ANNOUNCEMENT OF SPECIALIZATION AND LIMITATION OF PRACTICE.

This section and Section 5.1 are designed to help the public make an informed selection between the practitioner who has completed an accredited program beyond the dental degree and a practitioner who has not completed such a program. The dental specialties recognized by the American Dental Association and the designation for ethical specialty announcement and limitation of practice are: dental public health, endodontics, oral and maxillofacial pathology, oral and maxillofacial radiology, oral and maxillofacial surgery, orthodontics and dentofacial orthopedics, pediatric dentistry, periodontics and prosthodontics. Dentists who choose to announce specialization should use "specialist in" or "practice limited to" and shall limit their practice exclusively to the announced dental specialties, provided at the time of the announcement such dentists have met in each recognized specialty for which they announce the existing educational requirements and standards set forth by the American Dental Association.

Dentists who use their eligibility to announce as specialists to make the public believe that specialty services rendered in the dental office are being rendered by qualified specialists when

such is not the case are engaged in unethical conduct. The burden of responsibility is on specialists to avoid any inference that general practitioners who are associated with specialists are qualified to announce themselves as specialists.

GENERAL STANDARDS.

The following are included within the standards of the American Dental Association for determining the education, experience and other appropriate requirements for announcing specialization and limitation of practice:

- 1.** The special area(s) of dental practice and an appropriate certifying board must be approved by the American Dental Association.
- 2.** Dentists who announce as specialists must have successfully completed an educational program accredited by the Commission on Dental Accreditation, two or more years in length, as specified by the Council on Dental Education and Licensure, or be diplomats of an American Dental Association recognized certifying board. The scope of the individual specialist's practice shall be governed by the educational standards for the specialty in which the specialist is announcing.
- 3.** The practice carried on by dentists who announce as specialists shall be limited exclusively to the special area(s) of dental practice announced by the dentist.

STANDARDS FOR MULTIPLE-SPECIALTY ANNOUNCEMENTS.

The educational criterion for announcement of limitation of practice in additional specialty areas is the successful completion of an advanced educational program accredited by the Commission on Dental Accreditation (or its equivalent if completed prior to 1967) in each area for which the dentist wishes to announce.

ADVISORY OPINIONS

5.H.1. DUAL DEGREE DENTISTS.

Nothing in Section 5.H shall be interpreted to prohibit a dual degreed dentist who practices medicine or osteopathy under a valid state license from announcing to the public as a dental specialist provided the dentist meets the educational, experience and other standards set forth in the *Code* for specialty announcement and further providing that the announcement is truthful and not materially misleading.

5.H.2. SPECIALIST ANNOUNCEMENT OF CREDENTIALS IN NON-SPECIALTY INTEREST AREAS.

A dentist who is qualified to announce specialization under this section may not announce to the public that he or she is certified or a diplomat or otherwise similarly credentialed in an area of dentistry not recognized as a specialty area by the American Dental Association unless:

- 1.** The organization granting the credential grants certification or diplomat status based on the following: a) the dentist's successful completion of a formal, full-time advanced education program (graduate or postgraduate level) of at least 12 months' duration; and b) the dentist's training and experience; and c) successful completion of an oral and written examination based on psychometric principles; and
- 2.** The announcement includes the following language: [Name of announced area of dental practice] is not recognized as a specialty area by the American Dental Association. Nothing in this advisory opinion affects the right of a properly qualified dentist to announce specialization in an ADA-recognized specialty area(s) as provided for under Section 5.H of this *Code* or the responsibility of such dentist to limit his or her practice exclusively to the special area(s) of

dental practice announced. Specialists shall not announce their credentials in a manner that implies specialization in a non-specialty interest area.

5.I. GENERAL PRACTITIONER ANNOUNCEMENT OF SERVICES.

General dentists who wish to announce the services available in their practices are permitted to announce the availability of those services so long as they avoid any communications that express or imply specialization. General dentists shall also state that the services are being provided by general dentists. No dentist shall announce available services in any way that would be false or misleading in any material respect.

ADVISORY OPINIONS

5.I.1. GENERAL PRACTITIONER ANNOUNCEMENT OF CREDENTIALS IN INTEREST AREAS IN GENERAL DENTISTRY.

A general dentist may not announce to the public that he or she is certified or a diplomat or otherwise similarly credentialed in an area of dentistry not recognized as a specialty area by the American Dental Association unless:

1. The organization granting the credential grants certification or diplomat status based on the following: a) the dentist's successful completion of a formal, full-time advanced education program (graduate or postgraduate level) of at least 12 months duration; and b) the dentist's training and experience; and c) successful completion of an oral and written examination based on psychometric principles;
2. The dentist discloses that he or she is a general dentist; and
3. The announcement includes the following language: [Name of announced area of dental practice] is not recognized as a specialty area by the American Dental Association.

5.I.2. CREDENTIALS IN GENERAL DENTISTRY.

General dentists may announce fellowships or other credentials earned in the area of general dentistry so long as they avoid any communications that express or imply specialization and the announcement includes the disclaimer that the dentist is a general dentist. The use of abbreviations to designate credentials shall be avoided when such use would lead the reasonable person to believe that the designation represents an academic degree, when such is not the case.

NOTES:

1. A third party is any party to a dental prepayment contract that may collect premiums, assume financial risks, pay claims, and/or provide administrative services.
 2. A full fee is the fee for a service that is set by the dentist, which reflects the costs of providing the procedure and the value of the dentist's professional judgment.
 3. Advertising, solicitation of patients or business or other promotional activities by dentists or dental care delivery organizations shall not be considered unethical or improper, except for those promotional activities which are false or misleading in any material respect.
- Notwithstanding any *ADA Principles of Ethics and Code of Professional Conduct* or other standards of dentist conduct which may be differently worded, this shall be the sole standard for determining the ethical propriety of such promotional activities. Any provision of an ADA constituent or component society's code of ethics or other standard of dentist conduct relating to dentists' or dental care delivery organizations' advertising, solicitation, or other promotional activities which is worded differently from the above standard shall be deemed to be in conflict with the *ADA Principles of Ethics and Code of Professional Conduct*.

4. Completion of three years of advanced training in oral and maxillofacial surgery or two years of advanced training in one of the other recognized dental specialties prior to 1967.

Section 6 PRINCIPLE: THIRD PARTY PRACTICE AND CONTRACT PRACTICE.

A dentist may enter into an agreement with individuals and/or organizations to provide dental health care provided that the agreement does not permit or compel practices which lead to unethical conduct. In the performance of such contracts the dentist is required to deal fairly with the public and fellow practitioners in the locality.

A dentist who submits any billing for services rendered or to be rendered which are fraudulent, deceitful, or misleading in any way is engaged in unethical conduct.

CODE OF PROFESSIONAL CONDUCT

6.A. CONTRACTING WITH A HEALTH PLAN.

The practice of dentistry under contract with a health plan is not itself unethical unless the health plan's efforts to promote the dental benefits to the public may cause participating dentists to engage in unethical conduct.

6.B. NON-DENTIST OWNERSHIP.

A dentist should not participate in a dental practice arrangement which permits a non-dentist individual or company to own, maintain, or operate any office or place of business where the non-dentist entity employs or engages, under any kind of contract whatsoever, any other person to practice dentistry. Such participation shall be unethical.

6.C. RENDERING SERVICES TIMELY.

It is unethical for a dentist to contract his or her services under conditions that make it impossible to render services to his or her patients in a timely and reasonable manner which exemplifies the standards of his or her professional training, continuing education, years of experience and generally accepted standards of his or her peers. To do so is detrimental to the public and the individual dentist and lowers the dignity of the profession.

6.D. EXERCISING PROFESSIONAL JUDGEMENT AND SKILL.

A dentist shall not provide dental services nor participate in any contract or agreement under terms or conditions which prevent the dentist from freely exercising his or her professional judgment and skill.

IV. INTERPRETATION AND APPLICATION OF PRINCIPLES OF ETHICS AND CODE OF PROFESSIONAL CONDUCT.

The foregoing *ADA Principles of Ethics and Code of Professional Conduct* set forth the ethical duties that are binding on members of the American Dental Association.

The component and constituent societies may adopt additional requirements or interpretations not in conflict with the *ADA Code*. Anyone who believes that a member-dentist has acted unethically should bring the matter to the attention of the appropriate constituent (state) or component (local) dental society. Whenever possible, problems involving questions of ethics should be resolved at the state or local level. If a satisfactory resolution cannot be reached, the dental society may decide, after proper investigation, that the matter warrants issuing formal charges and conducting a disciplinary hearing pursuant to the procedures set forth in the *ADA Bylaws*, Chapter XII. PRINCIPLES OF ETHICS AND CODE OF PROFESSIONAL CONDUCT AND

JUDICIAL PROCEDURE. The Council on Ethics, Bylaws and Judicial Affairs reminds constituent and component societies that before a dentist can be found to have breached any ethical obligation the dentist is entitled to a fair hearing.

A member who is found guilty of unethical conduct proscribed by the *ADA Code* or code of ethics of the constituent or component society, may be placed under a sentence of censure or suspension or may be expelled from membership in the Association. A member under a sentence of censure, suspension or expulsion has the right to appeal the decision to his or her constituent society and the ADA Council on Ethics, Bylaws and Judicial Affairs, as provided in Chapter XII of the *ADA Bylaws*.

V. JUDICIAL PROCEDURE.

It is strongly urged that all dentists acquaint themselves with the Texas Dental Practice Act, the Rules adopted by the Texas State Board of Dental Examiners and the Texas and American Dental Association's Principles of Ethics and Code of Professional Conduct.

When in doubt about judicial procedure, consult the Judicial Committee of the component society, or the Judicial Council of the Texas Dental Association, or the Council on Bylaws and Judicial Affairs of the American Dental Association. In all instances, Chapter X, Bylaws of the Texas Dental Association and Chapter XI, Bylaws of the American Dental Association, which is the highest authority, shall apply in determining conduct subject to discipline, judicial procedure, appeals and penalties that may be imposed for violation of the Principles of Ethics and Code of Professional Conduct.